

Matter of Government Empls. Ins. Co. v Chohan

2020 NY Slip Op 30785(U)

January 21, 2020

Supreme Court, Nassau County

Docket Number: 611807/19

Judge: James P. McCormack

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This opinion is uncorrected and not selected for official publication.

[*1]

SUPREME COURT - STATE OF NEW YORK

PRESENT:

Honorable James P. McCormack
Justice of the Supreme Court

_____ x
**In the Matter of the Application of
GOVERNMENT EMPLOYEES INSURANCE
COMPANY to Stay Arbitration.**

**TRIAL/IAS, PART 18
NASSAU COUNTY**

Petitioner

Index No.: 611807/19

-against-

**Motion Seq. No.: 001 & 002
Motion Submitted: 11/18/19**

HARJINDER CHOCHAN,

Respondent.

_____ x

The following papers read on this motion:

- Notice of Petition/Supporting Exhibits.....X
- Notice of Cross Motion/Supporting Exhibits.....X
- Affirmation in Opposition to Cross Motion.....X
- Reply Affirmation to Cross Motion.....X

Petitioner, Government Employees Insurance Company (GEICO), petitions this court (Motion Seq. 001) for an order pursuant to CPLR §7503 permanently staying the arbitration due to the Respondent’s failure to comply with the agreement to arbitrate. In the alternative, GEICO seeks a temporary stay and an order directing Respondent, Harjinder Chohan (Chohan) to comply with discovery provisions of the insurance

[*2]

contract. Chohan cross moves (Motion Seq. 002) to dismiss, alleging that the court lacks personal jurisdiction over him. As the cross motion may render the petition moot, the court will consider the cross motion first.

CHOHAN'S CROSS MOTION TO DISMISS (MOTION SEQ 002)

Chohan was insured by GEICO at the time he was involved in a car accident. He claims that the other motorist was underinsured, and after settling his claim with the other motorist for \$25,000.00, which was the amount of the policy, he made a claim against his underinsured endorsement. Though he has \$100,000.00 of uninsured/underinsured coverage, that amount must be reduced by the amount he recovered by the other motorist.

It is undisputed by the parties that, pursuant to CPLR §7503, the petition herein had to be served in the same manner as a summons, or by certified mail return receipt requested. It is further undisputed that while the petition was served by mail, it was not served by "traditional" return receipt, meaning there was no green card for Chohan to fill out and return.

Chohan argues that by not choosing the "green card" method of return receipt requested, the service is improper. GEICO's affidavit of service of the petition indicates it was served "By Certified Mail RRR No. 9214890183713400000510". GEICO further provides, in opposition to the motion, United States Post office printouts indicating that GEICO chose to receive a return receipt electronically, and that the recipient did, indeed, sign for the document. The printout contains the same information, including a signature,

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that the green card would contain. Chohan argues, in essence, that when the legislature indicated that a petition could be served by certified mail, return receipt requested, they meant that the green card process had to be used. However, the Rule does not state that. It merely states “return receipt requested”. That the USPS offers electronic return receipts, and that GEICO chose to exercise that option, does not render service improper.

To be clear, neither the court nor USPS, as Chohan might surmise, is rewriting the Rule, simply because GEICO can prove the petition was sent and received. For example, had GEICO used Federal Express, which requires a signature, the court would have found service improper because it was not certified mail, return receipt requested, even though proof of receipt could be obtained. (See *Negron v. State*, 257 AD2d 652 [2d Dept 1999]). Service herein was, indeed, by certified mail, return receipt requested. The difference is that the manner used by GEICO did not exist at the time CPLR §7503(c) was promulgated. This does not render the service improper, or mean it was not “return receipt requested”. Had the Rule specifically required the “return of the green card,” Chohan’s argument would be more persuasive. Since the Rule does not state as much, the court finds service was proper. All of the cases Chohan relies upon were cases where the petition was served by ordinary mail. That is not the case herein. As for *Matter of Progressive Ins. Co. (Stoddard)*, 235 AD2d 704 [3rd Dept 1997], in that case the green card was sent inside the envelope, as opposed to being affixed on the outside. The court found that placing the green card inside the envelope “precluded petitioner from obtaining a properly endorsed return receipt”, thereby rendering the service by ordinary mail. The

[*4] matter herein is significantly distinguishable. Chohan had to go through the same exact processes as one who received a green card would go through, including signing for the package prior to having to open it. The only difference was instead of signing a green card, Respondent signed something else that was the equivalent of the green card. As such, *Matter of Progressive* has no relevance to this matter.

GEICO'S PETITION TO STAY ARBITRATION (MOTION SEQ 001)

Paragraph 2(ii) of the "Conditions" section of the uninsured/underinsured endorsement requires the insured to appear for an examination under oath (EUO). Chohan made his claim against the underinsured endorsement by letter of counsel dated August 8, 2019. GEICO's counsel responded by letter dated August 14, 2019, indicating that an EUO would be scheduled for October 28, 2019. The letter further contained a stipulation indicating that Chohan would agree to attend a physical examination, provide medical records and appear for the EUO. Chohan's counsel executed the stipulation but crossed out the requirement to attend the EUO. Chohan refused to appear for the EUO and has not done so to date. Further, Chohan raises no argument in these papers in an attempt to support his position that he does not need to attend an EUO.

The court finds the wording of the endorsement are clear and unambiguous. By entering into the contract to be insured GEICO, Chohan agreed to these terms. Thus he should not be allowed to demand the benefits of the underinsured endorsement until he complies with its terms. The arbitration will be stayed until Chohan attends the EUO. If

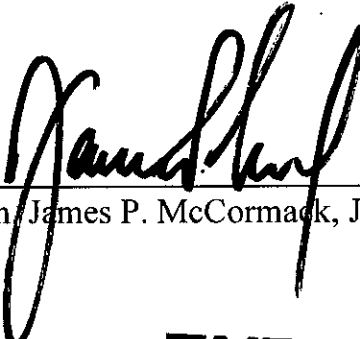
[*5] the EUO is scheduled and Chohan fails to appear and testify about the details of the accident and his injuries, the stay shall become permanent.

Accordingly, it is hereby

ORDERED, that GEICO's petition (Motion Seq. 001) to stay the arbitration is **GRANTED**, consistent with the terms of this order; and it is further

ORDERED, that Chohan's motion (Motion Seq. 002) to dismiss the petition due to improper service is **DENIED**.

Dated: January 21, 2020
Mineola, N.Y.



Hon. James P. McCormack, J. S. C.

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JAN 22 2020
NASSAU COUNTY
COUNTY CLERK'S OFFICE